IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6811 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOTIBHAI VIRABHAI BELDAR - Petitioner(s)

Versus

HIRIBEN W/O RAMABHAI K BELDAR & 1 - Respondent(s)

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Appearance :
MR AJ PATEL for Petitioner(s) : 1,
MR MR MENGDEY, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1.2.1, 1.2.4, 1.2.5, 1.2.6,1.2.7
None for Respondent(s) : 1.2.2 - 2.
UNSERVED-EXPIRED (R) for Respondent(s) : 1.2.3
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/10/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged

the legality and validity of the judgment and order passed by the Deputy Secretary, Revenue Department (Appeals), State of Gujarat dated 5-12-1990/20-2-1991 passed in Revision Application No.SRD/Panchma/HaKaPa.19 of 1990 in dismissing the same and confirming the order passed by the Collector, Panchmahal dated 30-12-1989 and further directing to initiate the proceedings under Section 84(c) of the Bombay Tenancy and Agricultural Act (for short “the Act”) as the sale in favour of the petitioner is in breach of Section 63 of the Act.

2. The land bearing survey No.319 situated at village Varasada, Tal: Halol, Dist: Panchmahals was of the ownership of one Ramabhai Khodabhai Beldar and Jehabhai Khodabhai Beldar and the same came to be purchased by the petitioner by registered sale deed and necessary entry was mutated in the revenue record entering the name of the petitioner on the basis of the said sale deed vide entry No.1937, which came to be certified on 20th March, 1982. The original land owners submitted an application to the Deputy Collector to take the aforesaid entry under *suo motu* revision and the Deputy Collector, Godhra initiated proceedings and vide its order dated 27-2-1987, set aside the entry No.1937 on the ground that the petitioner is not an agriculturist and therefore, he could not have purchased the land in

question and therefore the transaction is in breach of Section 63 of the Act. Being aggrieved by and dissatisfied with the order passed by the Deputy Collector, Godhra dated 27-2-1987 passed in RTS Revision Case No.7 of 1981, petitioner preferred appeal before the Collector, Panchmahals being RTS Appeal No. 144 of 1987 and the Collector, Panchmahals vide its order dated 30-12-1989, dismissed the said appeal. Being aggrieved by and dissatisfied with the order passed by the Collector, Panchmahals dated 30-12-1989, petitioner preferred Revision Application No.SRD/Panchma/HaKaPa.19 of 1990 before the Deputy Secretary, Revenue Department (Appeals), State of Gujarat and the Deputy Secretary by its order dated 20-2-1991 has dismissed the said revision application confirming the order passed by both the authorities below and further directed to initiate the proceedings under Section 84(c) of the Act as the transaction / sale is in breach of Section 63 of the Act. Being aggrieved by and dissatisfied with the judgment and order passed by the Deputy Secretary, Revenue Department (Appeals), State of Gujarat dated 20-2-1991, petitioner has preferred present Special Civil Application under Article 226 of the Constitution of India.

3. Shri AJ Patel, learned senior advocate appearing on behalf of the petitioner while relying upon the judgments of this court in the case of Evergreen Apartment Co-operative Housing Society V Special Secretary (Revenue) reported in 1991(1) GLR page 113 and in the case of Siddharthbhai B Shah and Others V State of Gujarat and Others reported in 1999(3) GLR page 2527, has submitted that the Revenue Authority while exercising RTS jurisdiction has no jurisdiction to consider the breach of any other law and the authority is bound to give effect to the registered sale deed and therefore, it is submitted that all the orders passed below are without jurisdiction and require to be quashed and set aside.

4. Shri Mengdey, learned AGP while supporting the orders passed by the authorities below, has submitted that when the petitioner was not an agriculturist, he could not have purchased the land in question and therefore, sale in favour of the petitioner is in breach of Section 67 of the Act and therefore, the entry in question is rightly set aside by all the authorities below and therefore, it is requested to dismiss the present Special Civil Application.

5. It is not in dispute that the Revenue Authorities were exercising the RTS jurisdiction with regard to the

mutation entry and as held by this court in the case of Evergreen Apartment Cooperative Housing Society V Special Secretary (Revenue) reported in 1991(1) GLR page 113 and in the case of Siddharthbhai B. Shah and Others V. State of Gujarat and Others reported in 1999(3) GLR page 2527, while exercising the RTS jurisdiction, the Revenue Authority has no jurisdiction to consider the breach of any other law and to consider the legality and validity of the sale. However, as held by the learned Single Judge of this court in the case of Ganeshbhai Manilal Mayavanshi V. State of Gujarat and Others reported in 2005(9) GHJ page 634, the Revenue Authority is bound to give effect to registered sale deed and to make the entry in the Revenue Record. However, if the Revenue Authority is of the opinion that the said transaction is in breach of any other laws, then additional entry can be made in the Revenue Record to the effect that according to it, the said transaction is in breach of particular Act and to refer the dispute to the Competent Authority for initiation of the proceedings.

6. Under the circumstance, the impugned order passed by the authorities below quashing and setting aside the entry in question, are required to be quashed and set aside and entry in question is required to be restored

by directing the Revenue Authority to make additional entry in the Revenue Record that according to Authorities, the transaction is in breach of Section 63 of the Act and the entry in question will not preclude the Competent Authority from initiating appropriate proceedings under Section 84(c) of the Act for breach of Section 63 of the Act as directed by the Deputy Secretary in its impugned order dated 20-2-1991 passed in No.SRD/Panchma/HaKaPa.19 of 1990.

7. For the reasons as stated above, the petition succeeds in part. The order passed by the Deputy Secretary, Revenue Department (Appeals), State of Gujarat dated 20-2-1991 is modified to the extent of confirming the order passed by the Collector, Panchmahals dated 30-12-1989 passed in RTS Appeal No.144 of 1987 and the order passed by the Deputy Collector, Godhra dated 27-2-1987 passed in RTS Revision Case No.7 of 1981 so far as it relates to quashing and setting aside the entry No.1937 with respect to the land in question and rest of the directions issued by the Deputy Secretary with regard to the initiation of the proceedings under Section 84(c) of the Act for breach of Section 63 of the Act by sale in favour of the petitioner is hereby confirmed and it is directed to restore entry no.1937 with respect to the land bearing survey No.319 situated at

village Varasada, Tal: Halol, Dist: Panchmahals. However, the Revenue Authority is directed to make additional entry in the Revenue Record that according to it *prima facie* there is a breach of Section 63 of the Act and the sale is invalid and the aforesaid entry will not preclude the Competent Authority from initiating the proceedings under Section 84(c) of the Act for breach of Section 63 of the Act. As there was a stay since 1993 granted by this Court, the question of limitation, if arises, the same can be considered by the appropriate authority considering the stay order as the competent authority was restrained from initiating the proceedings.

8. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

((M.R.SHAH,J)

shekhar/-